

IN THE COUNTY COURT OF
THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 2019MM002346AXXX
DIVISION B

STATE OF FLORIDA

vs.

ROBERT KRAFT,
Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS¹

Defendant's Motion to Suppress came before the Court on April 26, April 30, and May 1, 2019. William A. Burck, Esq. and Alexander B. Spiro, Esq. represented Defendant. Michael G. Kridos, Judith S. Arco, and Elizabeth Neto, Assistant State Attorneys, represented the State of Florida.

Based on the testimony, evidence, case and statutory law, and argument of counsel, the Court finds:

1. Defendant is charged with violating § 796.07(2)(f) and (5)(a)1, Florida Statutes, soliciting another to commit prostitution, pursuant to Informations filed February 25, 2019.²

2. On or about January 15, 2019, Detective Andrew Sharp of the Jupiter Police Department submitted to Circuit Judge Howard Coates an eleven-page search warrant titled Affidavit and Application for Search Warrant Authorizing The Monitoring And Recording Of Visual, Non-Audio Conduct, copy of which is attached hereto as Exhibit A. On January 15, 2019, Judge Coates signed a Search Warrant Authorizing the Monitoring And Recording

of Visual, Non-Audio Contact, copy of which attached hereto as Exhibit B, relying on Det. Sharp's Affidavit in issuing the search warrant.

3. On the basis of the search warrant, Det. Sharp surreptitiously installed five cameras in Orchids of Asia Day Spa located in Jupiter, Florida. One camera captured video of people entering the front section of the business. All customers seeking services at the Spa entered this section and paid for the desired services at the front desk. After paying for services, the customer was then taken to one of a number of massage rooms. Det. Sharp installed hidden surveillance cameras in four of the massage rooms. These cameras captured visual images only and had no audio recording capability. These rooms were recorded continuously while the Spa was open for business for five consecutive days.

4. On January 19, 2019 and January 20, 2019, a hidden camera captured images of Defendant allegedly engaging in illegal sexual activity.³ When Defendant left the Spa on January 19, 2019, he entered a car as a passenger and a Jupiter police officer followed the car for a brief time. The officer then radioed to another Jupiter police officer that Defendant was approaching the area where the second officer was stationed, and the second officer got behind and eventually stopped the car. The sole purpose of stopping the car was to identify Defendant as the person who had left the Spa a few minutes earlier.

5. Defendant invokes the Fourth Amendment⁴ in seeking to suppress the videotapes of Defendant allegedly engaging in illegal activity. The alleged criminal activity occurred not in a home, where the most stringent Fourth Amendment protection is granted, but in a commercial setting. However, the "capacity to claim the protection of the Fourth

Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.”⁵ While Defendant was an invitee of the business establishment in which the alleged acts occurred, the Court finds it clear that he had a reasonable, subjective expectation of privacy, as would anyone seeking a private massage in a commercial or professional setting, and that the activity in that room would remain private. Seeking even legitimate services in a spa normally involves removing all or most of a person’s clothing, behavior almost as private as would occur in a home. Furthermore, that expectation of privacy is one which this Court believes society objectively supports as reasonable.⁶

6. That Defendant may have been engaged in criminal activity is not material in determining whether society is prepared to recognize an objective expectation of privacy. As stated in McDade v. State:

Privacy expectations do not hinge on the nature of [a] defendant’s activities – innocent or criminal. In fact, many Fourth Amendment issues arise precisely because the defendants were engaged in illegal activity on the premises for which they claim privacy interests.⁷

The McDade court goes on to say that:

We may not justify the search after the fact, once we know illegal activity was afoot; the legitimate expectation or privacy does not depend on the nature of the defendant’s activities, whether innocent or criminal.⁸

Because Defendant had a subjective expectation of privacy, an expectation society would

find objectively reasonable, Defendant has standing to challenge the search warrant.

7. There are no federal or Florida statutes specifically authorizing or prohibiting surreptitious video surveillance, also called ‘sneak and peek’ or delayed notice searches. Likewise, there are no rules of criminal procedure, federal or Florida, specifically addressing surreptitious video surveillance. There is also a dearth of Florida cases offering guidance on this issue.⁹ Consequently, courts (mainly federal) have relied on a combination of Fourth Amendment principles, statutory guidelines, and rules of criminal procedure employed in analogous situations to determine the admissibility of evidence obtained through surreptitious video surveillance. While Florida courts are bound only to follow United States Supreme Court decisions on Fourth Amendment issues,¹⁰ the uniquely intrusive nature of video surveillance, and how infrequently it seems to be employed in Florida, indicates to this Court that federal case law is instructive.

8. The primary case guiding this Court, as it has other courts, is United States v. Mesa-Rincon.¹¹ This is one of the cases Detective Sharp cited and relied on in his search warrant.

9. Mesa-Rincon involved surreptitious video surveillance conducted at the request of the United States Secret Service in a specified building in which the defendants were suspected of counterfeiting United States currency. The court’s order authorized nonverbal conduct to be intercepted and recorded. The order authorized the equipment to be installed and maintained surreptitiously. Video surveillance captured the suspects counterfeiting. Defendants moved to suppress all video evidence. The court denied Defendants’ motion. The court relied on a combination of federal criminal rules (Rule 41b), federal case law, and

federal statutory law (Title III of the Omnibus Crime Control and Safe Streets Act of 1968) in finding the court had authority to issue the search warrant. The court acknowledged Congress had not defined the constitutional requirements for video surveillance.

10. Mesa-Rincon, in considering the purpose of the Fourth Amendment and intrusiveness of video surveillance, establishes five requirements a court must consider before video surveillance can be permitted. Those five requirements are:

- a. a showing that probable cause exists that a particular person is committing, has committed, or is about to commit a crime;
- b. the order particularly describes the place to be searched and the things to be seized in accordance with the Fourth Amendment;
- c. the order is sufficiently precise so as to minimize the recording of activities not related to the crimes under investigation;
- d. the judge issuing the order finds that normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or appear to be too dangerous;
- e. the order does not allow the period of interception to be longer than necessary to achieve the objective of the authorization, or in any event no longer than thirty days.¹²

11. Suppressing the unlawfully seized evidence is the remedy for failing to satisfy these five requirements.¹³

12. A reviewing court is required to give “‘great deference’ to a magistrate’s probable cause determination” and its function is “simply to ensure that the issuing magistrate had a substantial basis for concluding that probable cause existed.”¹⁴ This Court finds that the search warrant affidavit of Det. Sharp provided a sufficient basis for the issuing judge to find

probable cause to conduct the search.

13. This Court further finds that the search warrant satisfies the particularity requirement. It specifically names Hua Zhang as being in control of the premises, and further authorizes “video recordings of individuals engaged in acts related to these violations.” This broad description is similar to language approved in Mesa-Rincon.¹⁵

14. The Court finds Defendant has failed to prove by a preponderance of the evidence that the highly intrusive technique of surreptitious video surveillance is unreasonable under the circumstances. Video surveillance requires a very high showing of necessity, higher than audio surveillance. The video surveillance of the lobby and front desk is clearly acceptable as this is a public area of the Spa where a client would have a very low expectation of privacy. That expectation of privacy increases exponentially when the client enters one of the massage rooms; however, the unique circumstances of a massage room creates the need for an unusually intrusive law enforcement technique. That other agencies may have employed different law enforcement techniques is not persuasive to this Court, especially considering the risk of alerting the Spa to being the subject of an investigation.

15. The Court also finds the time limitation, five days unless otherwise approved by the court, to be reasonable and consistent with Mesa-Rincon.¹⁶

16. However, the Court finds the minimization requirement has not been satisfied in at least two respects: first, the search warrant itself is insufficient; and, second, minimization techniques were not sufficiently employed.

17. The order approved by the court in Mesa-Rincon specifically required minimization

and outlined the minimization procedures to be followed.¹⁷ The search warrant in this case does little to none of that. The search warrant does describe the places where cameras are to be installed, specifying no cameras are to be placed in the kitchen, bathroom, and personal bedrooms. But a spa client, whether engaging in innocent or illegal activity, would not be likely to frequent those three areas. The search warrant does not assert that criminal activity is suspected to be occurring in these three areas. Consequently, that limitation does little to further minimization. Furthermore, the search warrant does not address how to minimize the impact of video surveillance on female Spa clients. All of the assertions of illegal activity in the search warrant suggest or describe only male genital stimulation. The pre-search warrant investigation – such as reviewing websites and reviews of the Spa contained therein, obtaining physical evidence, and seeing slang terms used to describe alleged illegal activities in the Spa – all focused on male clientele. However, the Spa advertised services for women clients and, in fact, more than one woman had a significant portion of her Spa time viewed by a detective-monitor and the entirety of her spa time recorded and placed in Jupiter Police Department records. Failing to consider and include instructions on minimizing the impact on women, through a highly intrusive law enforcement technique in a setting with a high legitimate expectation of privacy, is a serious flaw in the search warrant, especially considering that the search warrant did not allege women were seeking illegal contact.

18. The search warrant also fails to include any minimization techniques or directives as to how detective-monitors should respond when viewing male spa clients receiving lawful services, or male clients when no probable cause can be established. This omission is also a

serious flaw in the search warrant. The testimony indicates the videotapes of these individuals remain in the records of the Jupiter Police Department.

19. The Court also finds that the implementation of minimization techniques was flawed. Both detective-monitors testified that their only direction about minimization consisted of being directed to look for illegal activity. That direction is simply insufficient to satisfy the minimization requirement.¹⁸ Also, there were no written guidelines provided to the detective-monitors to direct their minimization.¹⁹ Consequently, the detective-monitors did not have a common standard to guide them as to how they were to minimize surveilling innocent behavior or behavior that did not rise to the level of probable cause. The detective-monitors were simply left to their own standards and devices to satisfy the minimization requirement. One of the detective-monitors testified about discussing minimization with a spouse who also works in law enforcement. The other detective-monitor testified that he relied on previous experience in determining what and how to minimize. Knowledge about minimization in general does not satisfy the minimization required in a specific setting, especially one with a legitimately high expectation of privacy. This resulted in inconsistent application of minimization techniques.

20. The fact that some totally innocent women and men had their entire lawful time spent in a massage room fully recorded and viewed intermittently by a detective-monitor is unacceptable and results from the lack of sufficient pre-monitoring written guidelines. As previously noted, the search warrant affidavit gave no indication that women sought any form of sexual contact at the Spa. The detective-monitor's explanation that she was not sure

whether the woman would partake in illegal sexual contact is not acceptable and results from a lack of clear, written guidelines.

21. During the course of five days of video surveillance, the detective-monitors observed two circumstances that should have alerted them that illegal activity was not likely to occur during a massage and those individuals' exposure to surveillance should have been minimized. These circumstances are those individuals (male or female) who left on their underwear, and massages in rooms where lights were not dimmed. Admittedly, these clues to legitimate activity may not have been known to the detective-monitors at the outset of surveillance. However, these clues distinguishing legitimate and possibly illegitimate activity in the massage room should have been recognized by the detective-monitors as they conducted surveillance and the detective-monitors should have responded accordingly. The fact that, apparently, one male started with underwear on but had his underwear later removed does not excuse the greater number of surveilled and recorded innocent customers.

22. Strictly adhering to minimization requirements is essential because relative to wiretapping and bugging, video surveillance "is even more invasive of privacy, just as a strip search is more invasive than a pat down search."²⁰ Video surveillance is a constant form of search that takes place over an extended period of time, and for that reason, it often captures innocent behavior that is intended to be private.²¹

23. The Court finds that the search warrant does not contain required minimization guidelines, and that minimization techniques employed in this case did not satisfy constitutional requirements. Consequently, the court grants Defendant's Motion to Suppress


and all evidence against Defendant obtained through and in connection with the search warrant is suppressed.

24. Immediately after Defendant left the Spa on January 19, 2019, and after video surveillance captured his image in real time, he was followed by a Jupiter Police Department officer who then notified another officer to stop the car in which Defendant was a passenger. The stopping officer obtained the identification of Defendant through the stop; Defendant's identify was not known to law enforcement until he was stopped. Therefore, all information obtained through the stop is suppressed as the fruit of an unlawful search.²²

Based on the foregoing, Defendant's Motion to Suppress is granted and all evidence obtained against Defendant through and in connection with the search warrant is suppressed.

Furthermore, all information obtained about Defendant as the result of the traffic stop on July 19, 2019 is also suppressed.

ORDERED at West Palm Beach, Florida, on this 13 day of May 2019.


LEONARD HANSER
County Court Judge

¹ The Court has been made aware that the State nolle prossed Case No. 2019MM002348AXXX on May 13, 2019 and the charge therein consolidated under Case No. 2019MM002346AXXX. This Order, to be clear, addresses each Motion in each case as originally filed.

² The charge is identical in both cases.

³ The Court has viewed in camera all videotapes the parties stipulated the Court should view.

⁴ Defendant raises a number of other arguments but the Court finds Fourth Amendment concerns govern the Court's ruling.

⁵ Rakas v. Illinois, 439 U.S. 128, 143 (1979) (internal citations omitted).

⁶ The Court notes section 877.26 of the Florida Statutes, recognizes a “reasonable expectation of privacy” from commercial video surveillance in a dressing room, fitting room, changing room, and restroom, situations analogous to this case. § 877.26(1), Fla. Stat. (2018).

⁷ 154 So. 3d 292, 299 (Fla. 2014) (quoting United States v. Fields, 113 F.3d 313, 321 (2d Cir. 1997)).

⁸ Id. (quoting United States v. Pitts, 322 F.3d 449, 4S8-4S9 (7th Cir. 2003)).

⁹ The most useful Florida case this Court has found is State v. Butler, 1 So. 3d 242 (Fla. 1st DCA 2009). In Butler, the trial court suppressed on Fourth Amendment grounds videotape surveillance of a mother in her child’s hospital room in West Virginia. The mother was suspected of harming her child (another child of the mother had died previously while living in Florida) due to experiencing Munchausen Syndrome by proxy. Through state action, a video camera was hidden in the child’s hospital room and captured the mother appearing to attempt to harm the child. The trial court suppressed the West Virginia hospital videotape when Florida prosecuted the mother for the death of her first child but the appellate court reversed the trial court’s decision, finding the mother had no reasonable or legitimate expectation of privacy in her child’s hospital room, and no Fourth Amendment protection, under the peculiar facts of the case.

¹⁰ Art. I, §12, Fla. Const. See Amison v. State, 5 So. 3d 798, 800 (Fla. 2d DCA 2009) (“Neither the trial court nor this court is bound by the rulings of lower federal courts”).

¹¹ 911 F.2d 1433 (10th Cir. 1990).

¹² Id. at 1437.

¹³ Id. at 1436.

¹⁴ Mesa v. State, 77 So. 3d 218, 221 (Fla. 4th DCA 2011) (internal citations omitted) (quoting State v. Rabb, 920 So. 2d 117S, 1180 (Fla. 4th DCA 2006)).

¹⁵ 911 F.2d at 1441.

¹⁶ Id. at 144S.

¹⁷ Id. at 1441-1442.

¹⁸ While not a perfect analogy, the Court finds helpful the example of the strictures placed on law enforcement in implementing roadblocks. Both roadblocks and this case implicate Fourth Amendment rights. Roadblocks are warrantless seizures and must be undertaken pursuant to a written plan embodying specific neutral criteria which limit the conduct of the individual officers. State v. Jones, 483 So. 2d 433, 438 (Fla. 1986). These guidelines detail the procedures officers are to follow at the roadblock and are intended to prevent the officers from acting with “unbridled discretion.” In one Florida roadblock case, the appellate court found the absence of written guidelines fatally defective and suppressed all evidence obtained therefrom. Hartsfield v. State, 629 So. 2d 1020 (Fla. 4th DCA 1993). Avoiding officers acting with “unbridled discretion” during video surveillance is one goal of minimization techniques.

¹⁹ This is an important distinction between this case and State v. Frahm, 2019-000445-MM (Martin County, County Court, Kathleen H. Roberts, J., May 1, 2019). The Frahm order references “Minimization Instructions” indicating there must have been written guidelines. Judge Roberts’ order found those instructions were not

followed in executing the search warrant.

²⁰ United States v. Torres, 751 F. 2d 87S, 88S (7th Cir. 1984).

²¹ State v. Butler, 1 So. 3d 242, 2S0 (Fla. 1st DCA 2009) (Padovano, J., dissenting).

²² Wong Sun v. United States, 371 U.S. 471 (1963).

Copies to:

Jack A. Goldberger, Esq.
250 S. Australian Ave, Ste 1400
West Palm Beach, FL 33401

William A. Burck, Esq.
Quinn, Emanuel, Urquhart & Sullivan, LLP
1300 I Street NW, Suite 900
Washington, DC 20005

Alexander Spiro, Esq.
Quinn, Emanuel, Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

L. Martin Reeder, Jr., Esq.
Atherton McAuliffe & Reeder PA
224 Datura St., Ste 815
West Palm Beach, FL 33401

Thomas & LoCicero PL
915 Middle River Drive, Ste. 309
Fort Lauderdale, FL 33304

Shullman Fugate PLLC
2101 Vista Parkway, Suite 4006
West Palm Beach, FL 33411

Carol Jean LoCicero
601 South Boulevard
Tampa, FL 33606

Judy Arco, ASA

Elizabeth Neto, ASA

Greg Kridos, ASA

**AFFIDAVIT AND APPLICATION FOR SEARCH WARRANT
AUTHORIZING THE MONITORING AND RECORDING
OF VISUAL, NON-AUDIO CONDUCT**

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

THE STATE OF FLORIDA,
COUNTY OF PALM BEACH

BEFORE ME, Honorable Judge, Howard Coates Circuit Court Judge in and for Palm Beach County,
personally appeared this day

Detective Andrew Sharp, Jupiter Police Department

Who being by me first duly sworn, deposes and says that he believes and has good reason to believe that
a certain premises located in Palm Beach County, Florida, described as follows, to wit:

The business located at:

103 S. U.S. Highway 1, Suite C2, Jupiter, Florida, 33477, Jupiter Square Plaza.

To reach the premises:

**Begin at the intersection of Indiantown Road and Military Trail. Travel east on Indiantown Road
passed the intersection of Indiantown Road and U.S. Highway 1. Continue east on Indiantown Road
and the plaza is the first entrance on the left of East Indiantown Road.**

The business is readily recognized by:

**The business is located on the far west side of the plaza and faces north. The exterior of the building
is painted tan in color. The roof is green in color barrel tile. Suite C2 is a single story unit. A sign
located in the front window of the business identifies the business and displays the words "Orchids
of Asia Day Spa." There are also neon signs in the window with the words "Massage" and "Open".
Two marked handicapped parking spaces are directly in front of the business. When facing the
business, the front door is situated to the right of large multi-paned window. The front door is
painted dark brown in color and is of apparent metal construction with large glass pane windows.
The door is hinged on the right (west) and opens out (left to right).**

This is a complete description of the business desired to be searched, along with the curtilage thereof and
to diligently search said location and any and all persons found therein, who are reasonably believed to be
involved in the crime or crimes, being the premises occupied by or under the control of:

Exhibit A

Hua Zhang (A/F, 12/13/60).

And there is now being kept on the above described (premises) certain:

Evidence of, Prostitution in addition to fruits of, and instrumentalities of violation of the law(s) associated with Deriving Support from the Proceeds of Prostitution, specifically the Non-audio, video recordings of individuals engaged in acts related to these violations.

which is being kept and used in violation of the laws of the State of Florida, to wit:

Deriving Support from the Proceeds of Prostitution as enumerated under Florida State Statute 796.

which is in violation of the laws of the State of Florida, as enumerated in Chapter(s) 796 of the Florida State Statutes.

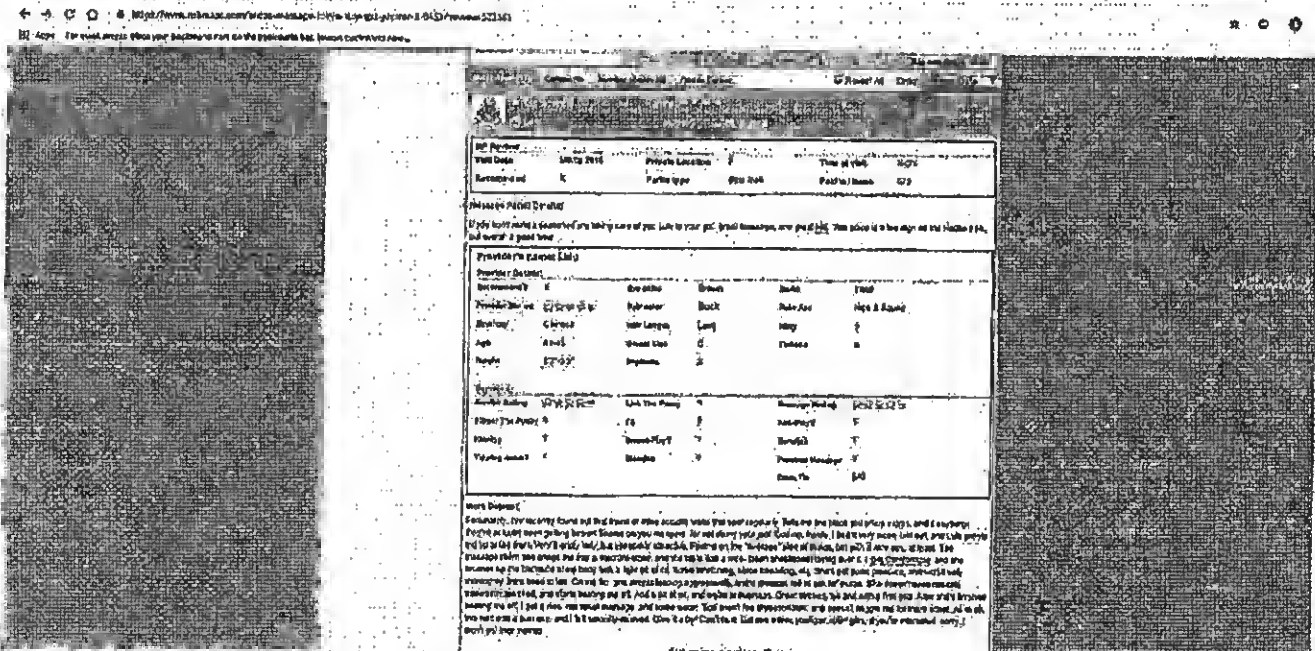
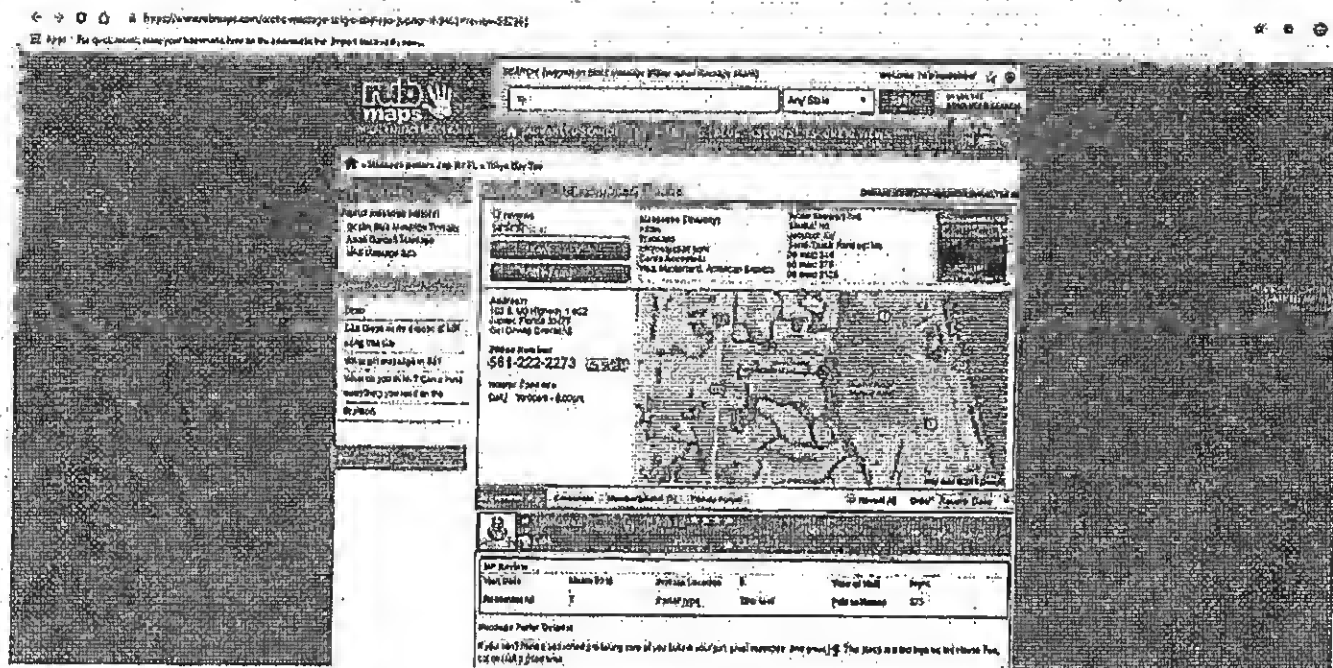
That the facts establishing the grounds for this application and the probable cause for believing that such facts exist are as follows:

In late October of 2018, I initiated a prostitution investigation based on information received from Detectives with the Martin County Sheriff's Office. Detectives from the Martin County Sheriff's Office advised they were working several cases of prostitution and human trafficking at Asian Massage Parlors in their county. During the course of their investigation, information was gained that there was a similar business in the Town of Jupiter. The business in question was identified as Orchids of Asia Day Spa, located at 103 S. U.S. Highway 1, Suite C2 in the Jupiter Square Plaza.

Based on the information obtained, I began researching the business. The State of Florida Division of Corporations Records show the business registered as Orchids of Asia Day Spa Inc. and was filed and became active on February 15th, 2012. The registered agent name is listed as Hua Zhang with an address of the business, 103 S. U.S. Highway 1 #C2, Jupiter, FL, 33477. A query of the Department of Highway Safety and Motor Vehicles Driver and Vehicle Information Database identified Hua Zhang with a date of birth of December 13th, 1960. Hua Zhang's listed address of 15248 Evergreen Oak Loop, Winter Garden Florida, 34787.

A Google search using the name of the business, Orchids of Asia Day Spa, revealed several reviews of the business on various search engines. Those reviews indicated the business was a "rub and tug"; "rub and tug" is slang term which identifies a business as providing sexual services, specifically manually manipulating the male genitals until the point of climax. The website Rubmaps.com is a forum based website which allows customers, seemingly all male, to discuss their individual experiences at illicit massage parlors. Under the name Orchids of Asia Day Spa, several postings were located from February 2015 to March of 2018. The reviews for Orchids of Asia Day Spa provide the name, address, phone numbers and directions to the location. The postings detailed visits involving Asian females providing sexual acts, as well as massage/body rubs in exchange for payment. The majority of the posts advised the female employee would provide the male client with a "hand job"; "hand job" is a slang term for a sexual act involving the manual manipulation of the male genitals. Listed below are screen shots from rubmaps.com and various other forums describing the illicit nature of Orchids of Asia Day Spa:





-Reviews of Orchids of Asla Day Spa posted to <https://www.rubmaps.com/erotic-massage-tokyo-day-spa-jupiter-fl-9451> March 2018

On Tuesday, November 6th 2018, I began a surveillance operation of the business. I conducted a visual inspection of the exterior of the business and observed a neon sign with the words "Massages", "Open" and "Facials". Listed next to the neon sign, in white vinyl lettering were the words "Massage Therapy", "Table Shower", "Body Treatments", and "Facial Treatments". On the front door of the business, in white vinyl lettering, the operating times of the business were displayed which stated the business is open 7 days a

week from 09:30am to 9:30pm. After being at the business for over 7hrs, I only observed male clients enter and exit the business, despite the listing advertising "Facials" and other services for female clients. From Tuesday, November 6th, 2018 to Wednesday, November 14th, 2018, covert video surveillance from the outside of the business was conducted 24hrs a day. Each day, the business opened at approximately 9am and did not close until approximately 10:30 or 11:30pm. Each client who entered the business was male and would stay of an average of 30-45 minutes. The Surveillance log for those days is as follows:

Surveillance began on Tuesday, November 6th, 2018 at 1500hrs to 2157hrs. During the surveillance period, approximately 7 males visited the business. All of the males stayed for a period of 30 to 60 minutes.

On Wednesday, November 7th, 2018, I conducted surveillance of the business from 0900hrs to 2300hrs. During the surveillance, approximately sixteen (16) males visited the business. All of the males stayed for a period of 30 to 60 minutes.

On Thursday, November 8th, 2018, I conducted surveillance at the business from 0900hrs to 2300hrs. During the surveillance period, approximately eighteen (18) males visited the business, including a golf cart party of eight (8) males. All of the males stayed for a period of 30 to 60 minutes.

On Friday, November 9th, 2018, I conducted surveillance at the business from 0900hrs to 2230hrs. During the surveillance period, approximately eighteen (18) males visited the business and stayed for a period of 30 to 60 minutes.

On Saturday, November 10th, 2018, I conducted surveillance at the business from 0900hrs to 2300hrs. During the surveillance period, approximately twenty (20) males visited the business and stayed for a period of 30 to 60 minutes.

On Sunday, November 11th, 2018, I conducted surveillance at the business from 0900hrs to 2200hrs. During the surveillance period, approximately thirteen (13) males visited the business and stayed for a period of 30 to 60 minutes.

On Monday, November 12th, 2018, I conducted surveillance at the business from 0900hrs to 2300hrs. During the surveillance period, approximately twelve (12) males visited the business and stayed for a period of 30 to 60 minutes.

After obtaining this information, I made contact with Florida Department of Health investigator Karen Herzog. I requested Herzog conduct a routine inspection on the business. On Wednesday, November 14th, 2018, Herzog conducted her inspection. Inside the business, Herzog advised there were three female employees present. Herzog took photographs of the employees Florida Driver's Licenses and Massage Therapy Licenses. The females were identified as the following: Lei Wang (A/F, 05/20/73), Hua Cao (A/F, 02/08/72) and Shen Mingbi (A/F, 07/19/60). Investigator Herzog took photographs of the inside of the business and advised it appeared as though the female employees were living there as there were two rooms with beds, including sheets and pillows. Next to the beds she located dressers which housed several personal items including medicines and clothing for the females. Inside the kitchen of the business, Herzog located a refrigerator filled with food and condiments, consistent with individuals living inside. While Herzog was inside of the business conducting her inspection, Detective Cook #404, Detective Jordan #405 and I were outside of the business to the front and rear in unmarked vehicles. At the conclusion of the inspection, Detective Jordan #405 advised an Asian female immediately exited the rear of the business and through away a small plastic bag into the trash dumpster located directly behind the business.

At approximately 2300hrs on the 14th, Detective Jordan and I conducted a trash pull on the business. Located inside of the dumpster to the business, I observed several white garbage bags. Based on my training and experience, it is known these types of Asian illicit massage business discard their trash inside small plastic grocery style bags. Next to several regular white garbage bags, I located a small white grocery style plastic bag. Inside of the white bag, I located two other small grey grocery style bags. Inside of the first grey grocery style bag, I located several pieces of white paper which had been ripped. I placed the pieces together which created a spreadsheet with several columns. The columns were titled Name, Service, Add Time, Amount, In, Out, Cash, Card, Cert./Pre-Paid, Card tip and other. Under the names column was the name Lulu. Lulu was listed on rubmaps.com as one of the provider's names for the illicit massage. Also located inside of the bag were several plastic napkins which were wet and appeared to be covered in seminal fluid. The items were secured and taken back to the Jupiter Police Department. On Thursday, November 15th, 2018, I requested Crime Scene Investigator McClendon conduct a presumptive test of the napkins recovered for the presence of seminal fluid. Investigator McClendon stated the napkins tested positive.

On Monday, November 19th, 2018, Agent Rhodes #343 and I conducted a second trash pull on the business. I located two small grocery style plastic bags inside the dumpster to the rear of the business. The first, a small tan grocery style plastic bag contained several credit card receipts with the name of the business printed on the top. Within the bag were several wet paper napkins which appeared to be covered in seminal fluid. The second bag, a gray in color small grocery style plastic bag contained several other wet paper napkins, along with ripped pieces of white paper. Handwritten on the paper was the following: "11:00 Lulu, 1hr, Dan" and in parenthesis the numbers 0878, believed to be the last four digits of a credit card number. The items were secured and taken back to the Jupiter Police Department. On Tuesday, November 20th, 2018, I requested Crime Scene Investigator McClendon conduct a presumptive test of the napkins recovered for the presence of seminal fluid. Investigator McClendon stated the napkins tested positive.

On Thursday, January 10th, 2019, surveillance was conducted at the business to monitor customer volume and traffic.

Surveillance Log:

1000hrs Surveillance began

1120hrs black Ford Escape with a New York tag pulls into the parking lot and parks near the business. W/M wearing a black windbreaker, green shorts and tan visor enters the business (Subject A).

1150hrs "Subject A" exits the business and was followed by Officer Kitchens #381 and a traffic stop was initiated for a violation of a traffic control device.

I conducted a roadside interview with Subject A concerning his activity inside the business, and was advised of the following: He stated a friend had referred him to the business. Subject A advised he had been to the business several times previously. Subject A stated when he entered the business he was in a foyer/lobby where he waited for an employee. He advised he was greeted by an Asian Female, he identified as "Ava". Subject A advised he asked for a half hour massage and was escorted to a massage room where he disrobed and laid face down on a massage table inside the room. Subject A advised he received a massage and when he turned over "Ava" manually stimulated his penis to climax. No condom was used. Subject A advised at the conclusion, "Ava"

cleaned him off using a hot towel and he was provided with napkins. I showed subject A a photograph of Lei Wang who he identified as "LuLu". Subject A advised "LuLu" was Individual he paid for the massage. I also showed subject A a photograph of Hua Cao, a known employee of the spa, who he identified as "Ava". Subject A advised he gave "Ava" \$70.00 for the services performed.

1300hrs "Subject B" arrives at the business driving a white Hyundai Genesis

1330hrs "Subject B" exits the business and was followed by Officer Kitchens #381 and a traffic stop was initiated for unlawful speed.

I conducted a roadside interview with Subject B concerning his activity inside the business, and was advised of the following: He stated a friend had referred him to the business and he had frequented the business several times before. Subject B stated when he entered the business he was in a foyer/lobby where he waited for an employee. He advised he was greeted by an Asian Female and he asked for a half hour massage. Subject B advised he paid \$59.00 for the massage and was escorted to a massage room. Subject B stated once inside the room he disrobed and laid face down on a massage table. Subject B advised he received a massage and when he turned over the female manually stimulated his penis to climax. No condom was used. Subject B advised at the conclusion, the female cleaned him off using a hot towel and he was provided with napkins with which he finished cleaning himself off. Subject B stated he gave the female \$20.00 cash for the services provided.

1445hrs "Subject C" arrives at the business driving a white Mercedes Benz SUV

1500hrs "Subject D" arrived at the business driving a four door black Honda.

1545hrs "Subject C" exits business and was followed by Officer Palladino #362 and a traffic stop was initiated for violation of a traffic control device. I conducted a roadside interview with Subject C concerning his activity inside the business, and was advised of the following: He stated he had just moved to the area and saw the business and had been there one time previously. Subject C stated when he entered the business he was greeted by an Asian female. Subject C stated he asked for an hour long massage and paid \$80.00 in cash and the female gave him \$1.00 back from the register. Subject C advised he was escorted to a massage room where he entered and disrobed. Subject C advised he lied down on the massage table face down and a different female, he identified as "Ava" gave him the massage and when he turned over on his back, the female manually stimulated his penis to climax. No condom was used. Subject C advised at the conclusion, the female provided him with a hot towel along with napkins to clean off with. I showed subject C a photograph of Hua Cao and he advised he believed she was "Ava". I also showed him a photograph of Lei Wang and he advised he believed her to be the female he paid at the front of the business.

1605hrs Subject D exited the business and was followed by Officer Kitchens #381, where a traffic stop was initiated for running a red light. I conducted a roadside interview with subject D who advised the following: when he entered the business he was in a foyer/lobby where he waited for an employee. He advised when he entered the plaza, he parked next to a white Mercedes with a maroon roof. Subject D advised an Asian female exited the vehicle and entered the business along with him. Inside the business, Subject D stated the same female asked him if he wanted 1 hour and he advised he did and stated he paid \$79 via credit card. Subject D stated he had visited the business previously and was waited on and paid the same female. The female then escorted to a massage

room. Once inside the room he disrobed and laid face down on a massage table. Subject D advised a different female from the initial female gave him a massage and when he turned over the female manually stimulated his penis to climax. No condom was used. Subject D advised at the conclusion, the female provided him with a hot towel to clean off with. I showed Subject D a photograph of Lei Wang and he identified her as the female driving the white Mercedes and stated she was the same female he paid today and on his previous visit.

During the surveillance operation, Lei Wang was seen exiting the business and entering a white Mercedes Benz convertible with a maroon top bearing FL# HNST08. The vehicle left the plaza and was surveilled as it traveled North on U.S. Highway 1 to a known plaza in Martin County where another illicit Asian Massage Parlor is located. Wang exited her vehicle and made contact with an unidentified white male.

Based on the above described information, there is probable cause to believe Lei Wang did reasonably believe or know another person was engaged in prostitution and Lei Wang did live or derive support or maintenance in whole or in part from what was believed to be the earnings or proceeds of such person's prostitution, contrary to Florida Statute 796.05(1) and (2)(a).

Based on the surveillance, a review of subpoenaed documents, other investigative methods and your affiant's experience in investigating similar illicit spa/massage parlor businesses, your affiant believes the Orchids of Asia Day Spa, located at 103 S. U.S. Highway 1 Unit #C2, Jupiter, is operated using a standard Asian Massage Parlor model. The overwhelmingly (if not exclusively) male customer clientele enter the business for a flat fee which goes directly to the business. The male customers then negotiate a fee or price with the female providing the service (sexual act). The money brought into the business through cash and credit/debit card transactions is then deposited into a business account in the name of Orchids of Asia. This investigation has taken place over a significant period of time. Surveillance along with other investigative means has shown that this pattern of criminal conduct is ongoing and not isolated to a specific employee, day of the week.

Further, your affiant has specialized training and experience in the investigation of prostitution organizations. The totality of circumstances regarding the statements of customers, the volume of male customers, short term traffic and information gathered on the business through various investigative techniques as well as an analysis of banking and financial records, lead your affiant to believe that a prostitution organization is being run out of the Orchids of Asia Day Spa business, 103 S. U.S. Highway 1, #C2, Jupiter, County of Palm Beach, State of Florida.

The following investigative methods, which are commonly utilized during the investigation of various criminal cases have either been tried and not succeeded in achieving the goals of the investigation, are too dangerous, or may jeopardize the investigation if employed or are not applicable in this particular investigation.

Many times in investigations involving massage parlors law enforcement agencies will employ the use of undercover officers or confidential informants. These undercover officers or informants will enter the business (while being monitored and many times recorded) and attempt to negotiate for a sex act in exchange for an amount of US Currency. This investigative technique is problematic for several reasons. Firstly, often times the women performing the (sexual) act are instructed not to speak or negotiate specifically for a sex act. Secondly, if the woman performing the massage is willing to discuss a specific sex act it may not occur until the customer is in a state of almost complete undress. This is a substantial safety concern for any officers working undercover or informants being utilized. Finally, due to the stated

concerns above, often times the undercover officer or informant will have to allow the woman performing the massage to touch his genitals in order to "consummate" the act in order for a crime to occur. Again this is tremendously problematic as it requires the undercover officer or informant to be himself commit a crime to further the investigation. A crime, none the less that is at the crux of the investigation. This is a concern ethically for both the particular officer involved as well as his law enforcement agency of employment.

Interviewing current or past employees of a business or organization is a tactic often used to further an investigation. During your affiant's experience in investigating Asian/Latin Massage parlors he has discovered that many of the women working there can be in the United States illegally or in a temporary status. Further some engaged in prostitution at these massage parlors/spas as a means to support themselves and their families. Thus, these girls are usually not interested in speaking with or cooperating with law enforcement for they fear status issues and/or a loss of income. Additionally, women working at Asian Massage parlors may also engage in prostitution as a means to repay a debt for transportation to the United States or to protect themselves and/or their families from abuse. Thus, they are very reluctant to speak with law enforcement out of fear and often times will be untruthful if interviewed. Therefore interviewing women who are or have worked at the business and obtaining truthful statements from them is an exceedingly difficult task. In addition, should the women not wish to cooperate, the investigation could be exposed and the owners/managers of the massage parlor may become aware of our investigation.

Your affiant believes a "sneak and peek" warrant is needed to identify and arrest subjects involved in prostitution as it relates to the Deriving of Funds from the proceeds of Prostitution occurring at and due to the Orchids of Asia Day Spa located at 103 S. U.S. Highway 1 #C2, Jupiter, Florida. While probable cause exists to believe prostitution is occurring inside the business at 103 S. U.S. Highway 1 #C2, your affiant and any fellow officers are unable to directly observe the said act of prostitution, which provides the necessary element to the charge of deriving funds from the proceeds of prostitution without the assistance of covert visual, non-audio surveillance.

Additionally, the focus of this investigation is not only the customers committing prostitution but more importantly those involved in deriving funds from the proceeds of prostitution, to include the owner(s) and/or manager(s) of the business and possibly any of the women working at the business. Your affiant believes that a "sneak and peek" warrant is the best and only way law enforcement can conclusively say prostitution is occurring inside the business. Thus, while voluntary statements of customers exiting the business is supportive to this argument, it is not enough, in and of itself, to establish the predicate crime of prostitution, which is required to charge deriving funds from the proceeds of prostitution. Additionally, while the previous customer statements and surveillance do lend support to the belief that probable cause exists to suppose that prostitution is occurring inside the business, it does not allow for a furtherance of an investigation regarding the deriving funds from the proceeds of prostitution without great risk to our case. Therefore, video surveillance is the only option to obtain definite evidence of prostitution occurring inside the business to further our investigation.

Further, in requesting the issuance of this "sneak and peek" warrant your affiants have strongly considered the 1990 10th Circuit Court of Appeals decision U.S. v. Mesa-Rincon, 911 F.2d 1433 (10th Cir. 1990) which addressed the parameters regarding what was then Title III searches (wire-taps). In the decision, the court specifically addressed silent, video-only surveillance. In the context of electronic interception of visual images, which is not regulated by federal statute, the courts have devised some safeguards by analogy to those required by Title III; but they have not necessarily adopted those Title III requirements that do more than implement constitutional requirements. See, e.g., United States v. Blasucci,

786 F.2d at 510; United States v. Torres, 751 F.2d at 884-85, US v. Falls, 34 F.3d 674 (8th Cir., 1994); US v. Koyomejian, 970 F.2d 536 (9th Cir. 1992). Based on the information provided above, your affiant believes that all guidelines have been met through this investigation. See also U.S. v. Batiste, 2007 U.S. Dist. LEXIS 61186.

Upon issuance of the "sneak and peek" warrant, covert surveillance cameras will only be placed in locations where prostitution is believed to be occurring. In addition, the front lobby of the business will also be under surveillance as this is where the exchange of money is believed to be occurring. There will be no cameras installed in areas expected to be non-criminal in nature, i.e. kitchen, bathroom, personal bedrooms. Additionally, the view of the video monitor will be situated in the monitoring room such that the view is not observable by persons other than those persons monitoring the view in the proper performance of the monitor's official duty. The visual, non-audio surveillance will be monitored during "peak hours" of the business, previously determined during other surveillance.

Your affiant, Detective Andrew N. Sharp, is a sworn Police Officer for the Jupiter Police Department, Jupiter, Palm Beach County Florida, since February 2007. Your affiant received an Associate of Arts Degree in Criminal Justice from Indian River State College in May 2006. Your affiant is a graduate of the Indian River State College Police Academy with 700 hours recruit certificate, and has completed in excess of three hundred (300) hours of continuing additional law enforcement training, including but not limited to:

Speed Measurement, Narcotics & Dangerous Drug Identification, Interviews & Interrogations, New Criminal Investigators Seminar, The Reid Technique Investigative Interviewing & Advanced Interrogation, Introduction to Criminal Investigations, Criminal Investigations, Body Language & Deception, Criminal Interdiction, Prescription Drug Crimes, Criminal Street Gangs Overview, Introduction to Clandestine Laboratory Investigations, Advanced Undercover Techniques and Survival, Command and Control Overview, Introduction to Highway and Rural Drug Investigations, The Art of Surveillance, The Undercover Officer, Interviews and Interrogations in High Risk Environments.

During the time your affiant has been a Police Officer, he has been assigned as a Road Patrol Officer, Field Training Officer, and a member of the Strategic Response Team. From February 2007, Your affiant responded to and conducted preliminary investigations on a variety of calls for service and was primarily assigned to our town's high crime areas. Since July 2016, your affiant has been assigned to the Jupiter Police Department's Criminal Investigations Division, as a Detective. From the commencement of the assignments to present, your affiant has personally participated in the investigations of person crimes, sexual crimes, robbery, and burglary in which such investigations has resulted in arrests or exceptional clearances. Your affiant has been involved with the execution of numerous search warrants.

Your affiant is empowered by F.S.S. 943 to conduct investigations and make arrests for violations of Chapter 796 related to Prostitution. Your affiant is a duly sworn law enforcement officer within the meaning of F.S.S. 934.02 (6) and is empowered to make arrests for the offences enumerated in F.S.S. 934.07, in particular, the offenses dealing in narcotics and dangerous drugs as well as prostitution, money laundering, and organized crime. Your affiant is currently responsible for the investigation detailed herein, which is being carried on in an organized manner, and in aid to which investigation, this application is made.

Your affiant wish to surreptitiously enter the described location for the purpose of covertly conducting electronic video surveillance of the interior location of the location to identify participants in the criminal enterprise, commonly referred to as a "sneak and peek". There shall be no capability on any of the installed equipment to allow audio monitoring or recording. The entry may be made within ten days of issuance of this warrant, in the daytime or the nighttime, or on Sunday, to forthwith install, monitor and perform

maintenance on electronic video surveillance on the said premises herein before specified. Once monitoring of the subject premises begins, your affiant will continue monitoring for no more than five days without further order of this court. The warrant shall be terminated or renewed based upon the evidence gleaned from the surveillance. Due to the property location and the covert nature of the criminal enterprise, no other, less intrusive investigatory means employed thus far have been successful, nor are that likely to be in the future. Upon termination of this order Your Affiant shall forthwith make return of his doings within ten days from the date thereof. Upon termination of the conditions justifying the need for covertness, notice of the surreptitious search will be given within seven days to the responsible person(s) of the location to be searched.

BASED ON YOUR AFFIANT'S knowledge, training and experience, there is probable cause to believe that the business located at **103 S. U.S. Highway 1, Unit #C2, Jupiter, Palm Beach County, State of Florida**, is being utilized to operate a prostitution organization and/or derive support from the proceeds of prostitution.

BASED ON all the foregoing information, your Affiant also has probable cause to believe that a violation of the laws of the State of Florida, to-wit: Chapter 796, Florida State Statutes, exists in the premises addressed at **103 S. U.S. Highway 1, Unit #C2, Jupiter, Palm Beach County, State of Florida**.

WHEREOF, affiant makes this affidavit and prays the issuance of a search warrant in due form of law for the surreptitious installation of video monitoring equipment within the above described (premises) for the said property, heretofore described, and for the monitoring and recording of visual non-audio conduct and safe keeping of the property, subject to the order of this Honorable Court or such other Court having jurisdiction over the offense, by the duly constituted officers of the law.


AFFIANT

Detective Andrew Sharp #412/1101

Sworn to and subscribed before me this 15TH day of January 2019


Honorable Judge Howard Coates of the Fifteenth
Judicial Circuit in and for Palm Beach County

SEARCH WARRANT AUTHORIZING THE MONITORING AND
RECORDING OF VISUAL, NON-AUDIO CONDUCT

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

IN THE NAME OF THE STATE OF FLORIDA, TO ALL AND SINGULAR;

The Sheriff of Palm Beach County, Florida, and his lawful Deputies, All Police Officers in Palm Beach County, Florida, The Commissioner of the Florida Bureau of Law Enforcement or any of his Duly Constituted Agents: to-wit:

Detective Andrew Sharp of the Jupiter Police Department.

WHEREAS, complaint on oath and in writing, supported by affidavit of a credible witness, or witnesses, to-wit:

Detective Andrew Sharp, Jupiter Police Department,

has this day been made before the undersigned:

Honorable HOWARD COATES Circuit Court Judge in and for Palm Beach County, Florida,

WHEREAS, said facts made known to me and considered by me have caused me to certify and find that the facts set forth in said affidavit show and constitute probable cause for the issuance of this warrant and the Court being satisfied of the existence of said grounds set forth in the affidavit and that the laws of the State of Florida have been or are being violated on or in a location known and described as follows:

The business located at:
103 S. U.S. Highway 1, Suite C2, Jupiter, Florida, 33477.

To reach the premises:

Begin at the intersection of Indiantown Road and Military Trail. Travel east on Indiantown Road for 1.7 miles passed the intersection of Indiantown Road and U.S. Highway 1. Continue east on Indiantown Road and the plaza is the first entrance on the right of East Indiantown Road.

The business is readily recognized by:

The business is located on the far west side of the plaza and faces north. The exterior of the building is painted tan in color. The roof is green in color barrel tile. Suite C2 is a single story unit. A sign located in the front window of the business identifies the business and

Exhibit B

displays the words "Orchids of Asia Day Spa." There are also neon signs in the window with the words "Massage" and "Open". Two marked handicapped parking spaces are directly in front of the business. When facing the business, the front door is situated to the right of large multi-paned window. The front door is painted dark brown in color and is of apparent metal construction with large glass pane windows. The door is hinged on the right (west) and opens out (left to right).

This is a complete description of the business desired to be searched, along with the curtilage thereof and to diligently search said location and any and all persons found therein, who are reasonably believed to be involved in the crime or crimes,

being the premises occupied by or under the control of:

Hua Zhang (A/F, 12/13/60).

And there is now being kept on the above described (premises) certain:

Evidence of Prostitution in addition to fruits of, and instrumentalities of violation of the law(s) associated with Deriving Support from the Proceeds of Prostitution specifically the Non-audio, video recordings of individuals engaged in acts related to these violations.

which is being kept and used in violation of the laws of the State of Florida, to wit:

Deriving support from the proceeds of prostitution as enumerated under Florida State Statute 796.

which is in violation of the laws of the State of Florida, as enumerated in Chapter 796 of the Florida State Statutes.

NOW THEREFORE, you, or any Officer of the Jupiter Police Department, are hereby commanded with proper and necessary assistance, in the name of the State of Florida, to surreptitiously enter the described location for the purpose(s) of covertly conducting electronic visual, non-audio surveillance of the interior the location to identify participants involved in the criminal enterprise. There shall be no capability on any of the installed equipment to allow audio monitoring or recording. The entry may be made within ten days of issuance of this warrant, in the daytime or the nighttime, or on Sunday, to forthwith install, monitor and perform maintenance on electronic video surveillance on the said premises herein before specified. Once monitoring of the subject premises begins, affiant will continue monitoring for no more than five days without further order of this court. The warrant shall be terminated or renewed based upon the evidence gleaned from the surveillance. Due to the property location and the covert nature of the criminal enterprise, no other, less intrusive investigatory means employed thus far have been successful, nor are that likely to be in the future Upon termination of this order you are to

forthwith make return of your doings upon executing this warrant, which you are hereby commanded to execute as the law directs within ten days from the date thereof.

Upon issuance of the "sneak and peek" warrant, covert video surveillance cameras will be placed only in locations where prostitution is believed to be occurring. In addition, the front lobby of the business will also be under surveillance as this is where the exchange of money is believed to be occurring. There will be no cameras installed in areas expected to be non-criminal in nature, i.e. kitchen, bathroom, personal bedrooms. Additionally, the view of the video monitor will be situated in the monitoring room such that the view is not observable by persons other than those persons monitoring the view in the proper performance of the monitor's official duty. The visual, non-audio surveillance will be monitored during the business's hours of operation which has been determined through prior surveillance as.

Upon termination of the conditions justifying the need for covertness, notice of the surreptitious search will be given within seven days to the responsible person(s) of the location to be searched.

You are hereby commanded, in the event that you seize any of the said property herein before described, to make up at the time and place of seizure, a full, true and itemized list and inventory of all things seized and taken, in duplicate, signed by you, and to then and there give and deliver the said duplicate copy thereof of the person from whom possession shall be taken, if taken from the possession of anyone, together with a duplicate copy of this warrant, and if not taken from the possession of anyone, then to any person in charge of said (premises), and in the absence of any such person, to leave the same on or in the (premises). This court directs that the Affiant keep the original Affidavit and Application in support of this Search Warrant, in the custody of the executing agency until further Order of the Court or until release by the executing agency. The original of this warrant, together with the original inventory, shall be returned and filed with the Clerk of the Court as stated above within ten days of the issuance of this warrant. Further any property seized or taken shall be impounded for use as evidence at any trial of any criminal or penal cause growing out of the having or possession of said property.

WITNESS my hand and seal this 15TH day of January, 2019.



Honorable HOWARD COATES
JUDGE of the Fifteenth Judicial
Circuit in and for Palm Beach County

